

June 18, 1975

CONGRESSIONAL RECORD—Extensions of Remarks

E 3307

PRIVACY

SPEECH OF

HON. RONALD A. SARASIN

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, June 16, 1975

Mr. SARASIN. Mr. Speaker, the Congress has become increasingly aware of the problems and dangers posed by Federal Government surveillance activities. Appalling discoveries in the recent past serve only to remind us that the discretionary authority of the executive branch of Government to conduct surveillance activities should be more closely monitored to insure complete compliance with the Constitution. Congressional hearings have uncovered a history of Government policies and activities that have frightening implications for all who are concerned with protecting privacy rights.

H.R. 2230, the Bill of Rights Procedures Act of 1975, now pending before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, is a positive step in the direction of the restoration and reinforcing of our fourth amendment rights. The major provision of this bill is the requirement that Federal agents would have to obtain court orders to initiate surveillance action against private citizens. The bill broadly defines surveillance to include the spectrum of intelligence-gathering activities. Dwellings, mail, and private records would be protected from sometimes arbitrary and unfair inspection. Searches conducted under the guise of "national security" would also be more vigorously controlled. The various loopholes in the present legal structure, a source of contradiction and frustration in the eyes of the public, would be unconditionally closed. Protection against "unreasonable searches and seizures" is an American right. H.R. 2330 will reestablish this constitutional promise.

The public strongly supports right-to-privacy legislation. The Harris survey poll of September 5, 1974, found that 68 percent of all Americans are "opposed to giving Government at any level authority to wiretap or use other kinds of electronic surveillance to gather evidence against citizens suspected of criminal activity without a specific court order granting permission in every case; 77 percent of all Americans believe overwhelmingly in the right "not to have one's mail opened by the Government, except by specific court order." Eighty-one percent assert their right "not to have one's phone conversations tapped for any reason, except with a court order." The American people resolutely demand absolute safeguards against invasion of privacy by the Federal Government.

Other important legislation is awaiting House approval. I urge quick action on H.R. 5198, a bill to amend the Internal Revenue Code to restrict the authority for inspection of tax returns, and H.R. 5299, which would establish formal procedures for the selection of tax returns for audit, including the informing of in-

dividuals as to why their returns were selected for additional official scrutiny.

The public clearly champions right-to-privacy legislation. True bipartisan support indicates the strength behind these measures. Let us take swift action in this critical area.

THE FCC REORGANIZATION AND REFORM ACT

HON. TORBERT H. MACDONALD

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 18, 1975

Mr. MACDONALD of Massachusetts. Mr. Speaker, the need for reform of the regulatory process has been well documented. Like so many subjects, however, it has been studied so much that there is no positive direction being given to the implementation of effective reforms. The purpose of H.R. 8014, the Federal Communications Commission Reorganization and Reform Act, is to serve as a starting point for regulatory reform.

Some of the provisions of this legislation are directed at problems peculiar to the FCC, but the broad framework of the bill could, I hope, serve as a model for reform of the other regulatory agencies.

It has become increasingly apparent that the drift of the regulatory agencies away from their positions of "arms of the Congress" designed to protect the public interest and toward the executive branch has resulted in a substantial loss of independence. Greater congressional participation in the oversight of agency regulation is imperative if this drift is to be stopped. And regulatory independence must be assured if the public interest is to be adequately safeguarded.

Furthermore, there has been mounting criticism of the regulatory agencies for losing sight of their regulatory mandate from the Congress and becoming unduly influenced by the industries which they were established to regulate with the result that these industries are perpetuated without meaningful change. More effective oversight of agency activities by the Congress is needed, although, too often, the agencies operate with procedures which are not open to the public and buried from all but the most probing of congressional scrutiny. These procedures must be changed if Congress is to reassert its oversight responsibilities in the regulatory process.

In addition, the regulatory process might be made to reflect "the public interest, convenience, and necessity," which is set forth as the standard for the FCC, for example, if the constituency of the agencies were broadened. Responsible public interest groups can be an effective source of providing that broadened constituency. This alternative needs to be seriously considered during the hearings as well.

Then, too, Congress has a larger responsibility to make the regulatory process work. We must examine the underlying statutes with which the agencies

must deal. In the case of the FCC, the Communications Act of 1934 is the product of a time when telecommunications technology was in a relatively primitive stage. A reexamination of this act alone will be a massive task, but one which the Congress should be willing to undertake if the regulatory agencies are to continue to function properly. And I can guarantee that the Subcommittee on Communications is prepared to undertake it.

In addition, we must take a close look at the regulatory process to determine whether it is being unduly restrictive of growth and development or whether it is being unfairly selective in determining which industries are allowed to expand and which are restricted. The Congress must make certain that American technology and know-how are not being inhibited by regulatory policies and processes which are out of date.

However, before we can adequately assess the role of the regulatory agencies, we have the obligation to see to it that they are made to function effectively and are given the independence and strength to be able to operate in the interest of the public as they were designed to by the Congress.

During the course of hearings on the FCC Reorganization and Reform Act, it is my hope that the ideas contained in this legislation will spark discussion and debate. The bill is not completely definitive—there may be provisions which have been omitted which the Subcommittee on Communications will decide to include, and there may be provisions included which will have to be modified or eliminated after we explore them thoroughly during the hearings.

H.R. 8014 provides a start down a long road toward regulatory reform. It attempts to increase the independence of the FCC, to provide Congress with the tools to achieve more effective oversight, and to open up the Commission's processes to public awareness. The time for studies and discussions is over, and the time for strong, meaningful legislation has arrived.

A copy of the key provisions of the act and a bill to amend the Communications Act of 1934 follow:

KEY PROVISIONS OF THE FCC REORGANIZATION AND REFORM ACT

The bill, introduced by Congressman Torbert H. Macdonald (D-Mass.), Chairman, House Subcommittee on Communications, would do the following:

1. Decrease the number of FCC Commissioners from 7 to 5 and lengthen their term of office from 7 to 10 years.
2. Provide that the Chairman of the FCC be confirmed by the Senate instead of merely being designated by the President.
3. Specifically limit the grounds for removal of FCC Commissioners to neglect of duty or malfeasance in office.
4. Provide that each FCC Commissioner may appoint up to four professional assistants and two secretaries, and that in addition, the Chairman of the FCC may appoint an administrative assistant.
5. Provide that legislative recommendations of the FCC shall be submitted directly to the Congress and shall not be subject to approval or review by any department or agency of the Executive Branch.
6. Require that the FCC provide appropriate Congressional Committees with any document (or copy thereof) in the possession or

control of the Commission within two days of a request.

7. Provide that the FCC may represent itself with its own attorneys in any civil action to which it is a party.

8. Require that meetings of the Commission be open to the public unless the Commission determines by a recorded vote that a meeting must be closed in the public interest.

9. Require a quarterly report be made by the FCC to the House and Senate Commerce Committees covering personnel and the status of significant rulemaking proceedings, studies and investigations.

10. Specifically authorize appropriations for the operation of the Commission.

11. Require that, when the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit that estimate or request to the Congress.

12. Establish an equal opportunity office which shall be directly responsible to the Commission and which shall assist the Commission in prescribing rules applicable to the Commission and entities regulated or licensed by the Commission and in implementing and enforcing such rules.

13. Require records be kept and disclosed to the public by each Commissioner and each employee of the Commission as to all meetings or communications with any person outside of the Commission concerning pending proceedings on policy matters.

14. Permit the FCC to provide payment for reasonable attorney's and expert witness' fees and other costs of participating in rulemaking proceedings for any person representing an interest which would otherwise not be represented and which is necessary for a fair determination of the proceeding, and who could not otherwise afford to participate effectively.

15. Require that whenever the FCC waives a rule or departs from established policy, it shall issue a statement of its reasons.

H.R. 8014

A bill to amend the Communications Act of 1934 in order to reorganize the Federal Communications Commission and revise its procedures so as to permit the Commission to more effectively perform its duties.

SHORT TITLE

SECTION 1. This Act may be cited as the "FCC Reorganization and Reform Act".

COMPOSITION OF THE COMMISSION

SEC. 2. (a) (1) Subsection (a) of section 4 of the Communications Act of 1934 (47 U.S.C. 154(a)) is amended to read as follows:

"(a) The Federal Communications Commission (hereafter in this Act referred to as the 'Commission') shall be composed of five Commissioners appointed by the President, by and with the advice and consent of the Senate. One Commissioner shall be appointed Chairman by the President, by and with the advice and consent of the Senate. The Commissioner appointed as Chairman shall serve as such until the expiration of his term as a member of the Commission (except that he may continue to serve as Chairman for so long as he remains a member and his successor as Chairman has not taken office). An individual may be appointed as a member at the same time he is appointed Chairman."

(2) (A) The last sentence of subsection (b) of such section 4 is amended by striking out "four members" and inserting in lieu thereof "three members".

(B) Subsection (h) of such section 4 is amended by striking out "Four members" and inserting in lieu thereof "Three members".

(3) (A) The amendments made by paragraphs (1) and (2) of this subsection shall

not affect the term of office of any person serving as a member of the Federal Communications Commission on the date of enactment of this Act.

(B) No appointment shall be made to fill the two vacancies first occurring (by expiration of term or otherwise) in the offices of members of the Federal Communications Commission after the date of enactment of this Act. Upon the occurrence of the second such vacancy, the terms of office of the remaining five members of the Commission shall be changed so as to expire on September 30th of the second, fourth, sixth, eighth, and tenth year following the year in which such second vacancy occurs and such five members of the Commission shall each be assigned one of such changed terms in the order of the length of their unexpired terms on the Commission immediately preceding the occurrence of such second vacancy with the member having the shortest unexpired term immediately preceding such vacancy receiving the shortest changed term.

(b) Subsection (c) of such section 4 is amended to read as follows:

"(c) Each Commission appointed under this Act shall hold office for a term of 10 years and until a successor is appointed and has qualified, except (1) as provided in section 2(a) (8) (B) of the FCC Reorganization and Reform Act; (2) that no Commissioner shall continue to serve beyond the expiration of the next session of Congress subsequent to expiration of his term of office; and (3) that any person chosen to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all of the powers of the Commission."

(c) Subsection (b) of such section 4 is amended by inserting immediately before the last sentence thereof the following: "Any Commissioner may be removed by the President only for neglect of duty or malfeasance in office."

(d) Subsection (d) of such section 4 is repealed.

STAFF OF COMMISSIONERS

SEC. 3. (a) Section 4(f) (2) of such Act is amended to read as follows:

"(2) Without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, but subject to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, each Commissioner may appoint not to exceed four professional assistants and two secretaries, each of whom shall perform such duties as such Commissioner shall direct. In addition, the Chairman of the Commission may appoint, without regard to the provisions of such title 5 governing appointment in the competitive service, but subject to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, an administrative assistant, who shall perform such duties as the Chairman shall direct."

(b) Section 4(f) (1) of the Communications Act of 1934 is amended by striking out "civil-service laws and the Classification Act of 1949, as amended" and inserting in lieu thereof the following: "applicable provisions of title 5, United States Code".

REPORTS ON CERTAIN MEETINGS AND COMMUNICATIONS

SEC. 4. Section 4(j) of the Communications Act of 1934 is amended by inserting "(1)" immediately after "(j)" and adding at the end thereof the following:

"(2) The Commission shall adopt rules requiring each Commissioner and each employee of the Commission who is engaged in

any significant policy-making decision, as determined by rules of the Commission, to disclose in public reports to be filed in timely fashion with the Secretary of the Commission information concerning meetings or communications with persons outside of the Commission concerning any pending Commission proceeding on any policy matter. To the extent practicable each such report shall set forth (A) the date, time, and place where such meeting or communication occurred, (B) the name of each person participating in such meeting or communication, and (C) a summary of the subject matter covered in such meeting or communication. The Commission may by rule except from the requirements of this paragraph reports in those situations in which the filing of such reports would serve no useful purpose in promoting openness in Commission decision making. The Commission shall include in its annual report the rules adopted to implement this paragraph and any rules making exceptions thereto."

PUBLICATION OF CERTAIN COMMISSION DECISIONS

SEC. 5. Section 4(j) of the Communications Act of 1934 is further amended by adding at the end thereof the following new paragraph:

"(3) Whenever the Commission waives a rule or departs from any of its established policies, including any internal processing standard, it shall issue a written decision giving a concise statement of the factual background and the policy basis for such waiver or departure."

LEGISLATIVE RECOMMENDATIONS

SEC. 6. (a) Section 4 of the Communications Act of 1934 is amended by adding at the end thereof the following new subsection:

"(p) If the Commission determines at any time that additional legislation is necessary or desirable, it shall submit the proposed legislation together with appropriate background information thereon to the Congress. No such proposed legislation shall be subject to review of approval by any department or agency of the Executive Branch of the Federal Government."

(b) Subsection (k) of section 4 of the Communications Act of 1934 is amended by striking out at the end thereof, including all legislative proposals submitted for approval to the Director of the Bureau of the Budget."

ACCESS TO INFORMATION

SEC. 7. Section 4 of the Communications Act of 1934 is further amended by adding after subsection (p), as added by section 6 of this Act, the following new subsection:

"(q) (1) Notwithstanding any other provision of law, whenever the Interstate and Foreign Commerce Committee of the House of Representatives or the Commerce Committee of the Senate (or any subcommittee of each such committee, having jurisdiction with respect to interstate or foreign communications, under the authority of a rule or other action of such committee) makes a written request for any document in the possession or under control of the Commission, the Commission shall within two days after the receipt of such request submit to such committee such document (or copies thereof).

"(2) If the Commission transfers any document in its possession or under its control to any other agency or to any person, it shall condition the transfer on the transferee's returning such document to the Commission for purposes of complying with paragraph (1) of this subsection.

"(3) For purposes of this subsection, the term 'document' means any book, paper, correspondence, memorandum, or other record, including a copy of any of the foregoing.

"(4) This subsection shall not be deemed to restrict any other authority of either

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(2) (A) The last sentence of subsection (b) of such section 4 is amended by striking out "four members" and inserting in lieu thereof "three members".

(B) Subsection (h) of such section 4 is amended by striking out "Four members" and inserting in lieu thereof "Three members".

(3) (A) The amendments made by paragraphs (1) and (2) of this subsection shall

not affect the term of office of any person serving as a member of the Federal Communications Commission on the date of enactment of this Act.

(B) No appointment shall be made to fill the two vacancies first occurring (by expiration of term or otherwise) in the offices of members of the Federal Communications Commission after the date of enactment of this Act. Upon the occurrence of the second such vacancy, the terms of office of the remaining five members of the Commission shall be changed so as to expire on September 30th of the second, fourth, sixth, eighth, and tenth year following the year in which such second vacancy occurs and such five members of the Commission shall each be assigned one of such changed terms in the order of the length of their unexpired terms on the Commission immediately preceding the occurrence of such second vacancy with the member having the shortest unexpired term immediately preceding such vacancy receiving the shortest changed term.

(b) Subsection (c) of such section 4 is amended to read as follows:

"(c) Each Commissioner appointed under this Act shall hold office for a term of 10 years and until a successor is appointed and has qualified, except (1) as provided in section 2(a)(3)(B) of the FCC Reorganization and Reform Act; (2) that no Commissioner shall continue to serve beyond the expiration of the next session of Congress subsequent to expiration of his term of office; and (3) that any person chosen to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all of the powers of the Commission."

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(d) Subsection (d) of such section 4 is repealed.

STAFF OF COMMISSIONERS

SEC. 3. (a) Section 4(f)(2) of such Act is amended to read as follows:

"(2) Without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, but subject to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, each Commissioner may appoint not to exceed four professional assistants and two secretaries, each of whom shall perform such duties as such Commissioner shall direct. In addition, the Chairman of the Commission may appoint, without regard to the provisions of such title 5, governing appointment in the competitive service, but subject to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, an administrative assistant, who shall perform such duties as the Chairman shall direct."

(b) Section 4(f)(1) of the Communications Act of 1934 is amended by striking out "civil-service laws and the Classification Act of 1949, as amended" and inserting in lieu thereof the following: "applicable provisions of title 5, United States Code".

REPORTS ON CERTAIN MEETINGS AND COMMUNICATIONS

SEC. 4. Section 4(j) of the Communications Act of 1934 is amended by inserting "(1)" immediately after "(j)" and adding at the end thereof the following:

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PUBLICATION OF CERTAIN COMMISSION DECISIONS

SEC. 5. Section 4(j) of the Communications Act of 1934 is further amended by adding at the end thereof the following new paragraph:

"(3) Whenever the Commission waives a rule or departs from any of its established policies, including any internal processing standard, it shall issue a written decision giving a concise statement of the factual background and the policy basis for such waiver or departure."

LEGISLATIVE RECOMMENDATIONS

SEC. 6. (a) Section 4 of the Communications Act of 1934 is amended by adding at the end thereof the following new subsection:

"(p) If the Commission determines at any time that additional legislation is necessary or desirable, it shall submit the proposed legislation together with appropriate background information thereon to the Congress. No such proposed legislation shall be subject to review of approval by any department or agency of the Executive Branch of the Federal Government."

(b) Subsection (k) of section 4 of the Communications Act of 1934 is amended by striking out at the end thereof ", including all legislative proposals submitted for approval to the Director of the Bureau of the Budget".

ACCESS TO INFORMATION

SEC. 7. Section 4 of the Communications Act of 1934 is further amended by adding after subsection (p), as added by section 6 of this Act, the following new subsection:

"(q) (1) Notwithstanding any other provision of law, whenever the Interstate and Foreign Commerce Committee of the House of Representatives or the Commerce Committee of the Senate (or any subcommittee of each such committee, having jurisdiction with respect to interstate or foreign communications, under the authority of a rule or other action of such committee) makes a written request for any document in the possession or under control of the Commission, the Commission shall within two days after the receipt of such request submit to such committee such document (or copies thereof).

"(2) If the Commission transfers any document in its possession or under its control to any other agency or to any person, it shall condition the transfer on the transferee's returning such document to the Commission for purposes of complying with paragraph (1) of this subsection.

"(3) For purposes of this subsection, the term 'document' means any book, paper, correspondence, memorandum, or other record, including a copy of any of the foregoing.

"(4) This subsection shall not be deemed to restrict any other authority of either